

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

DATA CLOUD TECHNOLOGIES, LLC,
Plaintiff,
v.
WPENGINE, INC.,
Defendant.

Civil Action No. 6:22-cv-00786-ADA-DTG

SCHEDULING ORDER

Pursuant to the Court's "Standing Order Governing Proceedings (OGP) 4.2 - Patent Cases", the Court hereby **ORDERS** that the following schedule will govern deadlines up to and including the trial of this matter:

Date	Item
November 8, 2022	Deadline to file a motion for inter-district transfer. After this deadline, movants must seek leave of Court and show good cause for the delay
December 13, 2022	Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art referenced in the invalidity contentions, and (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s). ¹
December 20, 2022	Parties exchange claim terms for construction.

¹ The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

Date	Item
January 5, 2023	Parties exchange proposed claim constructions.
January 12, 2023	Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall identify the scope of the topics for the witness's expected testimony. ² With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
January 17, 2023	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
January 24, 2023	Defendant files Opening claim construction brief, including any arguments that any claim terms are indefinite.
February 14, 2023	Plaintiff files Responsive claim construction brief.
February 28, 2023	Defendant files Reply claim construction brief.
February 28, 2023	Parties to jointly email the law clerks ³ to confirm their <i>Markman</i> date and to notify if any venue or jurisdictional motions remain unripe for resolution.
March 14, 2023	Plaintiff files a Sur-Reply claim construction brief.
March 17, 2023	<p>Parties submit Joint Claim Construction Statement and email the law clerks an editable copy.</p> <p>The parties shall jointly deliver to Chambers one paper copy printed double-sided of the Opening, Response, and Reply <i>Markman</i> briefs, omitting attachments, at least 10 days before the hearing. Absent agreement to the contrary, the Plaintiff shall be responsible for delivering a combined set of paper copies to chambers. The parties shall also jointly contact the Court's law clerk for a Box link to provide an electronic copy of the briefs, exhibits, and the optional technology tutorial. The parties should also include one paper copy of all patents-in-suit and the Joint Claim Construction Statement. To the extent the Court appoints a technical adviser, each party shall deliver the same to the technical adviser, also 10 days before the hearing.</p>

² Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

³ TXWDml_LawClerks_WA_JudgeAlbright&Gilliland@txwd.uscourts.gov

Date	Item
March 17, 2023	Parties submit optional technical tutorials to the Court and technical adviser (if appointed).
March 28, 2023 (or as soon as practicable)	<i>Markman</i> Hearing at 9:00 a.m.. This date is a placeholder and the Court may adjust this date as the <i>Markman</i> hearing approaches.
March 29, 2023	Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
May 9, 2023	Deadline to add parties.
May 23, 2023	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to Infringement or Invalidity contentions. This deadline does not relieve the Parties of their obligation to seasonably amend if new information is identified after initial contentions.
July 18, 2023	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)
September 26, 2023	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's Law Clerk to arrange a teleconference with the Court to resolve the disputed issues.
October 24, 2023	Close of Fact Discovery.
October 31, 2023	Opening Expert Reports.
November 30, 2023	Rebuttal Expert Reports.
December 19, 2023	Close of Expert Discovery.
December 22, 2023	Deadline for the second of two meet and confer to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. If it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.

Date	Item
January 10, 2024	<p>Dispositive motion deadline and Daubert motion deadline.</p> <p>The parties shall jointly deliver to Chambers one paper copy printed double-sided of the Opening, Response, and Reply briefs, omitting attachments, at least 10 days before the hearing. Absent agreement to the contrary, the Plaintiff shall be responsible for delivering a combined set of paper copies to chambers. The parties shall also jointly contact the Court's law clerk for a Box link to provide an electronic copy of the briefs, exhibits, and the optional technology tutorial. To the extent the Court appoints a technical adviser, each party shall deliver the same to the technical adviser, also 10 days before the hearing.</p>
January 23, 2024	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).
February 6, 2024	Serve objections to pretrial disclosures/rebuttal disclosures.
February 6, 2024	Parties to jointly email the Court's law clerks ⁴ to confirm their pretrial conference and trial dates
February 13, 2024	Serve objections to rebuttal disclosures and File Motions <i>in limine</i> .
February 20, 2024	<p>File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations).</p> <p>File oppositions to motions <i>in limine</i></p>
February 27, 2024	<p>File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com</p> <p>Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i>.</p>
March 8, 2024	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .

⁴ TXWDml_LawClerks_WA_JudgeAlbright&Gilliland@txwd.uscourts.gov

Date	Item
March 13, 2024 (or as soon as practicable)	Final Pretrial Conference. (Held in person unless otherwise requested)
April 3, 2024 (or as soon as practicable)	Jury Selection/Trial.

SIGNED this _____ day of _____, 2022.

ALAN D. ALBRIGHT
UNITED STATES DISTRICT JUDGE

October 31, 2022

Respectfully submitted,

By: /s/ James F. McDonough, III

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** Admission *pro hac vice* anticipated

/s/ David P. Whittlesey #

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e-signed with express permission

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*** Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I certify that on October 31, 2022, I caused to be electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record *via* email.

By: /s/ James F. McDonough, III
James F. McDonough, III